

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

METROKANE, INC.,
Plaintiff,

vs.

HOUDINI, INC.,
Defendants.

Civil Action No. 08-CIV-5841
(Buchwald)

ANSWER TO COMPLAINT

Defendant Houdini, Inc. ("Houdini"), by its attorneys, responds to the allegations in the Complaint as follows.

1. Paragraph 1 of the Complaint does not comprise factual allegations which require response.

2. Houdini is without knowledge or information sufficient to form a belief as to whether Metrokane is a leading manufacturer of lever-pull corkscrews and other bar accessories as alleged in paragraph 2 of the Complaint and therefore denies same.

3. Houdini denies that it designs gift baskets for wholesale customers "pursuant to the customers' specifications" as alleged in paragraph 3 of the Complaint.

4. Houdini admits the allegations contained in paragraph 4 of the Complaint.

5. Houdini denies that this district is the proper venue for hearing this matter because an action filed by Houdini against Metrokane for trademark infringement which involves the identical factual and legal issues as found in this proceeding is presently pending in the United States District Court for the Central District of California.

6. Houdini admits the allegations contained in paragraph 6 of the Complaint.

7. Houdini admits the allegations contained in paragraph 7 of the Complaint.

8. Houdini admits the allegations contained in paragraph 8 of the Complaint.

9. Houdini is without knowledge or information sufficient to form a belief as to the

allegations contained in the second sentence of paragraph 9 of the Complaint and therefore denies same.

10. Houdini is without knowledge or information sufficient to form a belief as to the allegations contained in paragraph 10 of the Complaint and therefore denies same.

11. Houdini admits the allegations contained in paragraph 11 of the Complaint.

12. Houdini admits the allegations contained in paragraph 12 of the Complaint.

13. Houdini denies that its Petition to Cancel Metrokane's '530 Registration was based on prior use of the Houdini mark in connection with "its gift basket design services" as alleged in paragraph 13 of the Complaint.

14. Houdini admits the allegations contained in paragraph 14 of the Complaint.

15. The first sentence of paragraph 15 of the Complaint does not comprise factual allegations which require response. Houdini denies the remaining allegations contained in paragraph 15 of the Complaint.

AFFIRMATIVE DEFENSE NO. 1

The Complaint does not state a basis for all of the relief requested in the Complaint.

AFFIRMATIVE DEFENSE NO. 2

Venue is improper in this district in view of a related, prior-filed action between the parties in which Metrokane's claim in this case is a compulsory counterclaim.

AFFIRMATIVE DEFENSE NO. 3

Plaintiff has not pled any basis for enjoining Defendant from using the HOUDINI mark as requested in the prayer for relief in the Complaint

AFFIRMATIVE DEFENSE NO. 4

The Court does not have jurisdiction to declare Defendant's application to register the HOUDINI mark to be abandoned in part as requested in the prayer for relief in the Complaint.

Respectfully submitted,

DATED: July 29, 2008

By 
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Attorneys for Defendant,
Houdini, Inc.

CERTIFICATE OF SERVICE

I certify that on July 29, 2008, I electronically filed the document described as ANSWER TO COMPLAINT with the Clerk of the Court using the ECF system which will send notification of such filing to the parties.

/s/ Betty L. Venuti

Betty L. Venuti

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